

HIGHER EDUCATION

SECRETARY OF HIGHER EDUCATION

**Rules and Procedures for Implementation of the Higher Education Capital Improvement
Fund Act**

Proposed New Rules: N.J.A.C. 9A:12

Authorized By: Rochelle Hendricks, Secretary of Higher Education.

Authority: N.J.S.A. 18A:72A-1 et seq. and P.L. 2012, c. 42.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2013-016.

Submit comments by March 23, 2013 to:

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The agency proposal follows:

Summary

In September 1999, the Higher Education Capital Improvement Fund Act (P.L. 1999, c. 217) (the Act) was enacted, establishing the \$550 million Higher Education Capital Improvement Fund (“capital improvement fund” or “improvement fund”) in the New Jersey

Educational Facilities Authority (Authority). Grants from the fund assist New Jersey four-year public and private colleges and universities in addressing deferred maintenance and other capital needs on their campuses.

The primary purpose of the capital improvement fund is to finance the repair of academic (that is, instructional, laboratory, communications, or research) and administrative facilities. The Act also provides for alternative uses of fund moneys under certain circumstances, such as replacing a building when to do so is less costly than repairing it, and improving, expanding, constructing, or reconstructing academic facilities or technology infrastructure if the institution's Federal grant recoveries will be maximized or if deferred maintenance is otherwise covered. A 2002 amendment to the Act allows up to 20 percent of a grant to be used in student support facilities for deferred maintenance or for improvement, expansion, construction or reconstruction. More recent amendments to the Act in 2012 (the Amending Act) reflect the replacement of the Commission on Higher Education with the Secretary of Higher Education as the State entity statutorily responsible for the coordination and planning of higher education in New Jersey. The Act provides for the issuance of bonds by the Authority with a maximum amount outstanding at any one time not to exceed \$550 million. As bonds are paid off, new bonding capacity is created. The Secretary of Higher Education in consultation with the Authority promulgates the implementing rules, which specify approval processes for institutional projects supported by the capital improvement fund and ensures that the moneys are distributed consistent with the intent of the Act. Grants were approved for the allocations of the initial \$550 million of bonds. Some of the bonds have now been paid off, thereby resulting in the ability to issue additional bonds to fund new projects. The issuance of additional bonds is subject to the approval of the State Treasurer.

The Secretary of Higher Education is promulgating these rules to provide for the allocation of money available if the State Treasurer authorizes new bonds as a result of the retirement of bonds previously issued by the Authority. The rules governing the implementation of the capital improvement fund expired October, 2010 and the Secretary of Higher Education is proposing the rules outlined below, pursuant to N.J.S.A. 52:14B-1 et seq., to implement the provisions of the Act.

The proposed rules for the capital improvement fund are as follows:

N.J.A.C. 9A:12-1.1 sets forth the chapter's purpose and authority.

N.J.A.C. 9A:12-1.2 provides definitions pertinent to the rules.

N.J.A.C. 9A:12-1.3 sets forth the eligibility requirements for the grant program.

N.J.A.C. 9A:12-1.4 delineates the grant application process, including the required contents of applications.

N.J.A.C. 9A:12-1.5 contains the application review and approval process, including the criteria the Secretary will use in reviewing applications for grants from the capital improvement fund.

N.J.A.C. 9A:12-1.6 delineates the grant authorization process.

N.J.A.C. 9A:12-1.7 delineates the payment process for the institutions to pay the debt service on the bonds.

As the Secretary has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed new rules for the Higher Education Capital Improvement Fund Act will continue present implementation of the capital improvement fund program. More than 440,000

students are enrolled in New Jersey colleges and universities. These students need well-maintained campus facilities to be competitive with their peers in today's global society. The capital improvement fund helps the institutions preserve and enhance classrooms, laboratories, and other existing facilities on which maintenance has been deferred, enabling them to upgrade the buildings to meet student and faculty needs. The 12 senior public colleges and universities and 14 institutions eligible for aid under the Independent College and University Assistance Act (P.L. 1979, c. 132) may apply for grants from the fund.

Economic Impact

Higher education plays a vital role in the economic development of the nation and the State by providing education and training for the workforce of the future, by advancing knowledge and technology through research, and by providing lifelong learning opportunities for all citizens. There is a crucial need to repair and renovate existing campus facilities in order to preserve and enhance the higher education systems and help ensure that New Jersey colleges and universities can continue to support the State's economy. The capital improvement fund, the Higher Education Facilities Trust Fund, the Equipment Leasing Fund, and the Higher Education Technology Infrastructure Fund have helped prepare New Jersey institutions to meet educational demands, which help the State compete in the global marketplace. Significant State funding for higher education deferred maintenance needs is an investment in strengthening New Jersey's competitiveness in a global and highly technological economy. The proposed new rules maintain implementation of the program that focuses on deferred maintenance.

Federal Standards Statement

The proposed new rules do not require a Federal standards analysis under Executive Order No. 27 (1994) because the capital improvement fund was established by New Jersey

legislation, debt service on the bonds issued to fund the capital improvement fund is wholly supported by State appropriations, and is not subject to any Federal requirements or standards.

Jobs Impact

The proposed new rules governing the capital improvement fund govern only the process eligible institutions must follow to receive approval for projects supported with improvement fund moneys. There will be short-term and long-term job increases associated with funded projects. The proposed new rules will not result in the loss of any jobs.

Agriculture Industry Impact

The proposed new rules will have no impact on the agriculture industry.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed new rules do not apply to small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules pertain strictly to public and publicly funded independent colleges and universities and private institutions of higher education in New Jersey, none of which qualify as a small business.

Housing Affordability Impact Analysis

The proposed new rules do not require a housing affordability analysis because the rules govern the implementation of the capital improvement fund and there is an extreme unlikelihood that the new rules will evoke a change in the average costs associated with housing.

Smart Growth Development Impact Analysis

The Secretary believes there is an extreme unlikelihood that the proposed new rules would evoke a change in housing production in Planning Areas 1 or 2, or within designated

centers, under the State Development and Redevelopment Plan because the rules govern the implementation of the Higher Education Capital Improvement Fund Act.

Full text of the proposed new rules follows:

CHAPTER 12

RULES AND PROCEDURES FOR IMPLEMENTATION OF THE HIGHER EDUCATION CAPITAL IMPROVEMENT FUND ACT

SUBCHAPTER 1. GENERAL PROVISIONS

9A:12-1.1 Purpose and authority

This chapter is promulgated by the Secretary of Higher Education to implement the Higher Education Capital Improvement Fund Act, P.L. 1999, c. 217, as amended by P.L. 2012, c. 42. This chapter is adopted in order to provide the mechanism by which eligible institutions may apply for and receive grants from the Higher Education Capital Improvement Fund.

9A:12-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

"Act" means the Higher Education Capital Improvement Fund Act, N.J.S.A. 18A:72A-72 through 80.

"Amending Act" means P.L. 2012, c. 42, the law that amends and supplements the Act.

"Authority" means the New Jersey Educational Facilities Authority or any board, body, commission, department, or officer succeeding to the principal functions thereof or to whom the powers conferred upon the Authority shall be given by law.

"Bond" means a bond or note of the Authority issued pursuant to the authority granted by the Act.

"Capital improvement fund" means the Higher Education Capital Improvement Fund as created by the Act.

"Capital improvement project" or "project" means a project approved by the Secretary for a grant under the Act.

"Construction ready" means the extent to which the planning and design work have been completed and construction is able to begin, and the degree to which a project shall be completed expeditiously once begun. An evaluation of whether a project is construction ready shall include the status of the design work, project site readiness, zoning and permitting approvals, as well as the anticipated timeframe during which the project will be completed, and the pacing of related construction.

"Cost-effectiveness" means the degree to which a project produces a positive economic analysis when considering the construction, operating, and maintenance expenses, compared to the project's resultant facilities and/or equipment, the life span of the facilities and/or equipment, facility usage and capacity, user productivity, and, where appropriate, such attributes as aesthetics, historic preservation, security, and safety.

"Deferred maintenance" means scheduled or unscheduled maintenance to facilities that was not performed.

"Grant" means a grant of moneys from the capital improvement fund approved by the Secretary for a capital improvement project.

"Grant agreement" means the grant agreement between the institution and the Authority, which sets forth the terms and conditions of the grant, amount of the grant, and disbursement schedule.

"Institution" means a public or private four-year institution of higher education that is eligible to receive State aid.

"Renewal and renovation" means making the changes necessary to address deferred maintenance needs; to meet all State and Federal health, safety, fire, and building code standards; or to provide a safe and appropriate educational or working environment.

"Secretary" means the Secretary of Higher Education.

"Student support facilities" means student residence halls, student dining facilities, student activity centers, and student health centers.

"Technology infrastructure" means video, voice, and data telecommunications equipment and linkages with a life expectancy of at least 10 years, including transport services and network interconnections, as well as future developments in multimedia equipment and linkages. Only computer software that is part of the operating or data base management systems is considered part of technology infrastructure for the purpose of the Act; application software, for purposes such as word processing, spreadsheets, desktop publishing, and email, does not qualify as technology infrastructure.

9A:12-1.3 Project eligibility

(a) Moneys from the capital improvement fund shall be awarded in the form of grants to New Jersey's four-year public and private institutions of higher education for the cost, or a portion of the cost, of the renewal, renovation, improvement, expansion, construction, and reconstruction of facilities and technology infrastructure.

(b) Each institution shall use the grants for existing renewal and renovations needs at instructional, laboratory, communication, research, and administrative facilities.

(c) An institution may use up to 20 percent of a grant within student support facilities for renewal and renovation or improvement, expansion, construction, and reconstruction.

(d) Grants funds may be used for the improvement, expansion, construction, and reconstruction of instructional, laboratory, communication, and research facilities, or technology infrastructure if:

1. The institution establishes that all renewal and renovation is completed at instructional, laboratory, communication, research, and administrative facilities or is accounted for through other funding sources;

2. The institution proposes the project for the purpose of maximizing Federal grant recoveries; or

3. The institution proposes to replace a building when the projected renewal and renovation costs exceed the projected cost of replacement.

(e) For a project to be eligible to receive a grant, the institution must:

1. Have an up-to-date long-range facilities plan approved by the institution's governing board that includes provisions to address deferred maintenance and other capital renewal requirements and pledges to use the capital improvement fund grant to advance that plan;

2. Commit, by resolution of its governing board, to maintaining the capital improvement project funded by the grant;

3. Certify that it will use the funds for renewal or renovation of instructional, laboratory, communication, research, and administrative facilities, or for the alternatives provided in (d) above;

4. Commit to paying one-third of debt service on the bonds issued to fund the capital improvement project if a public institution and one-half of debt service if a private institution.

9A:12-1.4 Grant applications

(a) Following approval by its governing board at a duly authorized meeting, an institution may apply to the Secretary for a grant from the capital improvement fund. The institution's application shall include the following items:

1. A certification that the eligibility requirements provided in N.J.A.C. 9A:12-1.3 have been met;

2. A complete description of the proposed capital improvement project, including design information, and for renewal and renovation projects, an explanation of modifications to the facilities other than repairs;

3. A copy of the institution's governing board's resolution approving the institution's application and committing the institution to support the annual operating costs of and maintenance requirements for the proposed project;

4. A copy of the institution's current long-range facilities plan approved by the institution's governing board that includes provisions to address deferred maintenance and other

capital renewal requirements or a certification that such a plan has already been submitted to the Secretary pursuant to P.L. 2009, c. 90;

5. A description of how the proposed project addresses the institution's long-range facilities plan and meets the estimated need for renewal and renovation;

6. The estimated schedule for completing the project, including cash flow requirements;

7. Cost data for the project, along with identification of all sources of revenue to be used for any costs not funded by the grant;

8. Identification of all sources of revenue to be used for the institution's share of debt service on the bonds issued for the capital improvement project;

9. The useful life of any equipment as determined either by reference to the Internal Revenue Service's Class Life Asset Depreciation Range System set forth in Revenue Procedure 87-56, as amended, supplemented or superseded, or by appraisal of any independent engineering or accounting firm, as appropriate;

10. Certification by the institution that the project will comply with all laws, regulations, codes, statutes, and government guidelines, including the principles of affirmative action and equal employment opportunity, where applicable, as specified in the Act;

11. For applications requesting an exemption by the Secretary of the requirements of N.J.A.C. 9A:12-1.3(a) and (b) for the purpose of maximizing Federal grant recoveries, the application shall explain how the capital improvement project shall maximize such recoveries. The explanation shall include both sources of funds and dollar estimates of the Federal grant fund recoveries that shall be generated by the proposed project;

12. For any improvement, expansion, construction, reconstruction, or technology infrastructure projects proposed as alternatives or additions to renewal and renovation projects,

the application shall explain how the institution shall meet its total estimated need for renewal and renovation as contained in its long-range facilities plan. The explanation shall identify specific renewal and renovation projects, their funding sources, and a timetable for their completion;

13. For any building replacement proposed as an alternative to renewing or renovating a specific facility, the application shall include a justification for the replacement, including a comparison of the replacement costs with the costs of renewing or renovating that facility;

14. Any additional information the institution deems necessary to demonstrate how the institution's proposed project meets the objectives identified in N.J.A.C. 9A:12-1.5(b); and

15. Any other information as the Secretary may require on a case-by-case basis and relating to a specific application.

(b) Grant applications shall be submitted in a format provided by the Secretary.

(c) Only grant applications that are complete will be reviewed by the Secretary.

9A:12-1.5 Application review and approval process

(a) The Secretary shall conduct a review of the applications. Such applications will be reviewed based on:

1. The completed application bearing the earliest submission date; or
2. A competitive application process whereby all applications will be submitted by a date certain and will be evaluated to determine which applications are the most qualified to receive funding.

(b) In determining whether an application shall be approved for a grant, the Secretary shall consider the degree to which the proposed capital improvement project supports the following objectives:

1. Advancement of student education in the State of New Jersey;
2. Improvement and expansion of educational opportunities for students;
3. Promotion of academic research excellence, workforce readiness, and the enhancement of the State's academic and economic competitiveness and prosperity by assisting in the production of a highly skilled workforce;
4. Promotion of innovation and improvement in the delivery of higher education;
5. Advancement of study at all levels in science, technology, engineering, and mathematics education;
6. Consistency with the institution's educational mission;
7. Consistency with the institution's long-range facilities plan;
8. The cost-effectiveness of the project;
9. The degree to which the project is construction ready;
10. Consistency of the project with the State's goals and priorities for development and redevelopment, including the promotion of industry clusters, job and business opportunities in areas designated by the State for growth, transportation choice, and efficient mobility of goods and people, and promotion of access to opportunity for all New Jersey residents;
11. Demonstrated commitment over the past 10 years to appropriate maintenance of facilities previously funded by State of New Jersey grant programs; and
12. Whether it serves the best interests of higher education in the State as a whole.

9A:12-1.6 Authorization process

- (a) The Secretary shall establish a review committee comprised of representation from the Office of the Secretary of Higher Education, the New Jersey Educational Facilities Authority, the New Jersey Schools Development Authority, the New Jersey Economic Development Authority, and an external advisor with technical expertise to evaluate project grant applications and make recommendations on funding.
- (b) The Secretary shall examine the recommendations of the review committee and shall, via a written certification, provide preliminary approval or disapproval of the grant, pursuant to N.J.A.C. 9A:12-1.5(b), and the amount of the grant.
- (c) The Secretary shall submit to the Legislature a copy of the grant application and a copy of the written certification preliminarily approving the grant, including the amount approved, with a copy of such material to the Authority. If the Legislature does not disapprove the grant by the adoption of a concurrent resolution within 45 days of receipt from the Secretary, the grant shall be deemed to be approved by the Legislature and by the Secretary.
- (d) Upon authorization of the grant pursuant to (b) above, the institution shall enter into a grant agreement with the Authority, which shall set forth the terms of the grant award and be provided to the board of the Authority for approval by resolution.
- (e) Each grant award shall be contingent upon the recipient governing board's entering into a contract or contracts to construct the capital improvement project within one year of the date on which the grant funds are made available. The funds shall be considered available on the date of the Authority's issuance of the bonds to fund the capital improvement project or on the date of the authorization of the grant, whichever is later.

(f) Each recipient of a grant shall provide such information as the Secretary may request regarding the use of the grant and the progress of the project.

(g) The Secretary may reduce, or cancel entirely, the amount of a grant:

1. If an institution determines not to undertake a project for which a grant was awarded;
2. To adjust for actual project expenses in a manner consistent with the approved grant;

or

3. If the project is not substantially completed and the grant substantially disbursed six months after the estimated construction completion date set forth in the grant application, as adjusted for any actual delay to the institution entering into a construction contract consistent with (d) above.

(h) No reduction in the grant amount shall be made pursuant to (g)3 above if:

1. Delays are the result of Federal, State, or local government approvals or regulatory requirements not attributable to the institution; or

2. In the sole determination of the Secretary, there are other compelling and documentable reasons.

9A:12-1.7 Payment of principal and interest

(a) Each four-year public institution shall pay the Authority, or the bond trustee if so directed by the Authority, one-third and each four-year private institution shall pay the Authority, or bond trustee if so directed by the Authority, one-half of the amount necessary to pay the principal and interest on the portion of bonds allocated to finance the capital improvement projects for the institution and in accordance with its lease agreement.

(b) If an institution fails or is unable to pay to the Authority in full, when due, any such obligation of an institution to the Authority, an amount sufficient to satisfy the deficiency shall be retained by the State Treasurer from State aid or any other appropriation payable to the institution. As used in this subsection, "obligation of an institution" means any amount payable by the institution for the principal and interest on the bonds, notes, or other obligations of the Authority issued to finance projects for the institution under this program. The Authority shall notify the State Treasurer of the amount to be retained to satisfy the obligation of each institution. A copy of such notification shall be submitted to the Secretary.